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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/890,805	08/30/2001	Serge Restle	05725.0927	6749
22852	7590	11/18/2005	EXAMINER	
FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER LLP 901 NEW YORK AVENUE, NW WASHINGTON, DC 20001-4413			WILLIAMS, LEONARD M	
			ART UNIT	PAPER NUMBER
			1617	

DATE MAILED: 11/18/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/890,805

Applicant(s)

RESTLE ET AL.

Examiner

Leonard M. Williams

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 August 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 24,34-37,49,51,74 and 75 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 24,34-37,49,51,74 and 75 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Detailed Action

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 01/21/2005 has been entered.

Response to Arguments

Examiner notes receipt of the applicant's remarks filed 08/08/2005 amending claim 51 to depend from claim 49. No additional amendments were made. The objection of claim 51 set forth in the previous office is overcome by the current amendment of claim 51.

Applicant's arguments filed 08/08/2005 have been fully considered but they are not persuasive. The applicant's have asserted that the examiner failed to meet each and every claim limitation in the 102(b) rejection of claims 24, 27-49, and 51-76 over Birstwistle et al. (US Patent 5139781) presented in the office action mailed 02/07/2005. The examiner respectfully disagrees. The applicant's assert on page 18 last paragraph that the examiner relied on example 9 of the Birstwistle reference as the basis of the

anticipation rejection. The examiner respectfully disagrees and points out that the example 9 was set forth at the end of the rejection as one example presented in the Birstwistle reference. The remainder of the rejection addressed the limitations set forth in the applicant's claims. For clarification the examiner will address applicant's statement that the examiner asserts that ethylene glycol monostearate is equivalent to the at least one water-insoluble mono-carboxylic acid ester recited in the claims. In the office action of 02/07/2005 the examiner when presenting example 9 clearly indicates that ethylene glycol monostearate is a non-ionic surfactant and water insoluble ester. No assertion is made that ethylene glycol monostearate is a water-insoluble mono-carboxylic acid ester as recited in the claims. The examiner will point out that in the preceding parts of the 102(b) rejection the examiner pointed out that the Birstwistle et al. compounds included emollients including, isopropyl myristate, isopropyl palmitate, butyl stearate, butyl myristate, lauryl lactate and isopropyl linolate (in amounts of from 0.01-99%) all compounds meeting the various water-insoluble mono-carboxylic acid esters as recited in the claims. Additionally the examiner would like to draw the applicant's attention to col. 5 line 35 to col. 6 line 10, of Birstwistle et al. where it is taught that the compositions can include tallow fats and coconut oil (both containing triesters of glycerol fatty acids meeting the triesters as set forth in the applicant's claims) in amounts of up to 90%. For the reasons set forth above and the reasons of record as set forth in the 102(b) rejection of claims 24, 27-49, and 51-76 over Birstwistle et al. (US Patent 5139781) presented in the office action mailed 02/07/2005, the 102(b) rejection

is maintained. The 102(b) rejection of claims 24, 27-49, and 51-76 over Birstwistle et al. (US Patent 5139781) is reproduced below.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 24, 34-37, 49, and 74-75 are rejected under 35 U.S.C. 102(b) as being anticipated by Birtwistle et al. (US Patent No. 5139781).

Birtwistle et al. teach, in col. 2 lines 15-65, compositions suitable for topical application to the skin or hair, which comprise 1-99% of a monoalkyl or monoalkenyl phosphate surfactant (anionic surfactant), 1-50% of a dialkyl or dialkenyl phosphate surfactant (anionic surfactant) and 1-50% of a co-surfactant chosen from alkylamidobetaines (amphoteric surfactant) or alkylamphoglycinates (amphoteric surfactant). Birstwistle et al. teach, in col. 8 lines 15-65, that the compositions can also comprise non-ionic surfactants of up to 50% (preferably 1-40% by weight), such as alkylethoxylates, alkylalkanolamides, sucrose laurate, methyl glucose laurate, and esters of glycols and glycerols such as ethylene glycol mono stearate and glyceryl mono stearate. Birstwistle et al. teach, in col. 11 lines 5-30, that additional emollients can be used in the compositions including glyceryl monolaurate, glyceryl monostearate, isopropyl myristate, isopropyl palmitate, butyl stearate, butyl myristate, lauryl lactate,

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isopropyl linolate, and others. Birtwistle et al. teach, in example 9, a body shampoo for use in the shower or when bathing comprising triethanolammonium mono-(ethyleneglycol-mono-n-decyl ether) phosphate (an anionic surfactant, 10% by weight), triethanolammonium di-(ethyleneglycol-mono-n-octadecenyl ether) phosphate (an anionic surfactant, 8% by weight), cocoamphodipropionate (an amphoteric surfactant, 9% by weight), ethylene glycol monostearate (a non-ionic surfactant and water-insoluble ester, 1.5% by weight) and water anticipating the "...composition comprising (A) a cosmetically acceptable aqueous medium, (B) a washing base comprising at least one anionic surfactant and at least one amphoteric surfactant, (C) at least one water-insoluble carboxylic acid ester...the concentration of said ester... 1.2 to 8% by weight...the concentration of said washing base...ranging from 6 to 35% by weight...the anionic surfactant:amphoteric surfactant ratio by weight being less than or equal to 3:1" of claim 24, The "...composition wherein at least one water-insoluble carboxylic acid ester is chosen from..." of claim 34, the "...composition...wherein at least one esters is chosen form..." of claim 35, the "...composition...wherein said monocarboxylic acid...is chosen from..." of claim 36, the "...composition...wherein said monoalcohols...are chosen from..." of claim 37, the "...composition comprising (A) a cosmetically acceptable aqueous medium, (B) a washing base comprising at least one anionic surfactant and at least one amphoteric surfactant, (C) at least one water-insoluble carboxylic acid ester...the concentration of said ester... 1.2 to 8% by weight...the concentration of said washing base...ranging from 6 to 35% by weight..." of claim 49, the "...method for cleaning and/or removing makeup from a keratinous substance..." of

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claim 74, and the "...process for washing and for conditioning a keratinous substance..." of claim 75.

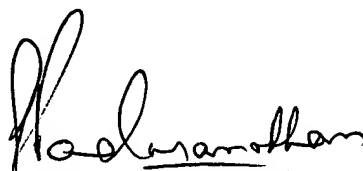
Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Leonard M. Williams whose telephone number is 571-272-0685. The examiner can normally be reached on MF 9-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan can be reached on 571-272-0629. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

LMW


SREENI PADMANABHAN
SUPERVISORY PATENT EXAMINER